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Part I — Dispositional Hearings

12.1 Purpose of Dispositional Hearings

*See Chapters 10 (pleas) and 11 (trials).

Dispositional hearings are conducted to determine what measures the court will take concerning juveniles who are properly found within the jurisdiction of the court following a plea or trial in delinquency cases, and, when applicable, what measures the court will take concerning a parent or guardian. MCR 5.943(A). See, generally, *In re Ricks*, 167 Mich App 285, 295–96 (1988).*

The laws within the Juvenile Code (MCL 712A.1 et seq.; MSA 27.3178(598.1) et seq.) must be liberally construed so that each juvenile coming within the jurisdiction of the Family Division receives the care, guidance, and control, preferably in his or her own home, conducive to the juvenile’s welfare and the best interest of the state. MCL 712A.1(3); MSA 27.3178(598.1)(3), and MCR 5.902(B). If a juvenile is removed from the control of his or her parent, the juvenile must be placed in care as nearly as possible equivalent to the care that should have been given to the juvenile by his or her parent. *Id.* The court rules governing juvenile proceedings within the Family Division are to be construed to secure fairness, flexibility, and simplicity. MCR 5.902(A).

*See Section 19.1 (court’s options following conviction in designated cases).

A dispositional hearing may also occur in designated cases if the court chooses to order a disposition following conviction instead of sentencing the juvenile as an adult. MCL 712A.2d(8); MSA 27.3178(598.2d)(8), and MCL 712A.18(1)(n); MSA 27.3178(598.18)(1)(n).*

12.2 Right to Have Judge Preside at Dispositional Hearing

The parties have a right to a judge at any hearing on the formal calendar. MCR 5.912(A). MCR 5.903(A)(6) defines “formal calendar” as all judicial phases of a delinquency proceeding other than a proceeding on the consent calendar, a preliminary inquiry, and a preliminary hearing. Thus, the parties have a right to have a judge preside at a dispositional hearing. The parties in

a delinquency proceeding include the petitioner and the juvenile or parent. MCR 5.903(A)(13)(a).

If a disposition is imposed following designated proceedings, the juvenile does not have the right to have the same judge who presided at trial or who accepted a plea in the designated case preside at the dispositional hearing. MCR 5.912(A)(3).*

MCR 5.913(B) states that unless a party has demanded a trial by jury or by a judge pursuant to MCR 5.911 or 5.912, a referee may conduct the trial and further proceedings through the dispositional phase. Thus, if a referee tries the case, that same referee may handle the disposition.

MCR 5.913(A)(2) and MCL 712A.10; MSA 27.3178(598.10), specify the requisite qualifications of a referee. If the juvenile is charged with a criminal offense under MCL 712A.2(a)(1); MSA 27.3178(598.2)(a)(1), only referees who are licensed attorneys may conduct delinquency proceedings other than preliminary inquiries or preliminary hearings. The sole exception is for probation officers or county agents who were designated to act as referees by a probate judge prior to January 1, 1988, and were acting as referees at that time.

If a referee does conduct the trial and dispositional hearing, at the conclusion of the dispositional hearing, the referee must inform the minor, the parent, and the respondent of the right to file a request for review of the referee's recommended findings and conclusions as provided in MCR 5.991(B). MCR 5.913(C).*

*See Section 19.1 (court's options following convictions in designated cases).

*See Chapter 13.

12.3 Persons Entitled or Required to Be Present at Dispositional Hearings

A. Juvenile

The juvenile may be excused from part of the dispositional hearing for good cause shown, but must be present when the disposition is announced. MCR 5.943(D)(1).

B. Victim

MCR 5.943(D)(2) states that the victim has a right to be present at the dispositional hearing as provided in the Juvenile Crime Victim's Rights Act.*

*See also Section 12.7, below (victim's right to make impact statement).

C. Juvenile's Parent or Guardian

The parent or guardian of a juvenile over whom the court has assumed jurisdiction under MCL 712A.2(a)(1); MSA 27.3178(598.2)(a)(1) (criminal offenses), must attend all hearings unless excused for good cause. MCL 712A.6a; MSA 27.3178(598.6a). This provision is enforced through the court's contempt power. However, failure of a

parent or guardian to attend a hearing is not grounds for an adjournment, continuance, or appellate relief. MCL 712A.6a; MSA 27.3178(598.6a).

If a parent or guardian of a juvenile fails to attend a hearing before a judge or referee after having received a summons earlier in the proceedings and, subsequently, been given notice of the hearing by the court, the parent or guardian may be held in contempt of court and fined, although not jailed, as provided in MCL 600.1715; MSA 27A.1715. The contempt shall be considered criminal in nature, and the parent or guardian is entitled to a due process hearing. MCR 5.928. MCL 600.1715; MSA 27A.1715, allows for a fine of not more than \$250.00.

If the parent or guardian fails to pay the fine within a reasonable time set by the court, proceedings to enforce the fine may be either civil or criminal in nature and may include jail as provided in MCL 600.1715; MSA 27A.1715. MCR 5.928.

The parent or guardian will not be held in contempt if the court had, before the hearing, excused the parent's attendance or, at a hearing to consider the issue of contempt, the parent or guardian shows good cause for failure to attend the juvenile's hearing. MCR 5.928.

NOTE: For detailed information on contempt proceedings, see *Benchguide on Contempt of Court* (MJL, 1987).

12.4 Right to Counsel

MCL 712A.17c(1); MSA 27.3178(598.17c)(1), and MCR 5.915(A)(1) state that if the juvenile in a delinquency case is not represented by an attorney, the court must advise the juvenile of the right to the assistance of counsel at each stage of the proceedings, including dispositional proceedings. The appearance of defense counsel is governed by MCR 2.117(B). MCR 5.915(C).

A. Appointment of Counsel

The court must appoint an attorney* to represent the juvenile if any of the following applies:

- (a) the parent refuses or fails to appear and participate in the proceedings;
- (b) the parent is the complainant or victim;
- (c) the juvenile and those responsible for the support of the juvenile are found financially unable to retain an attorney and the juvenile does not waive the right to an attorney;

*See Form JC 03.

(d) those responsible for the support of the juvenile refuse or neglect to retain an attorney and the juvenile does not waive the right to an attorney; or

(e) the court determines that the best interests of the juvenile or the public require appointment.

MCL 712A.17c(2)(a)–(e); MSA 27.3178(598.17c)(2)(a)–(e), and MCR 5.915(A)(2)(a)–(e).

An attorney appointed by the court shall serve until discharged by the court. MCL 712A.17c(9); MSA 27.3178(598.17c)(9), and MCR 5.915(E).

NOTE: In some cases, the court will continue the attorney’s appointment past disposition — usually because the needs of the juvenile demand that an attorney familiar with the case follow the juvenile’s progress while he or she remains under the court’s jurisdiction.

B. Waiver of Right to Counsel

The juvenile may waive the right to the assistance of counsel except where a parent or guardian ad litem objects or where the court determines that the best interests of the juvenile or the public require appointment of counsel. The waiver must be made in open court to a judge or referee, who must find and place on the record that the waiver was voluntarily and understandingly made. MCL 712A.17c(3); MSA 27.3178(598.17c)(3), and MCR 5.915(A)(3).^{*} See, generally, *In re Gault*, 387 US 1, 42; 87 S Ct 1428; 18 L Ed 2d 527 (1967).

^{*}See Form JC 06.

C. Assessment of Attorney Fees Against Parents

If an attorney is appointed for a party in delinquency proceedings, the court may enter an order assessing attorney costs against the party or a person responsible for the support of that party. MCL 712A.17c(8); MSA 27.3178(598.17c)(8), and MCR 5.915(D).^{*}

^{*}See Section 12.16, below.

D. Appointment of Guardians Ad Litem

The court may appoint a guardian ad litem for a party if the court finds that the welfare of the party requires it. MCR 5.916(A). For rules governing the appearance and rights of guardians ad litem, and the responsibility for the costs of guardian ad litem, see MCR 5.916(B)–(D).

NOTE: The relative importance of the guardian ad litem has declined as a result of the requirement that most juveniles must be represented by attorneys. Traditionally, a guardian ad litem's responsibility is to protect the best interests of the juvenile. Because in most instances the juvenile's attorney will fulfill this traditional function, a guardian ad litem should be appointed only if it appears to the court that the juvenile's attorney may not be able to do so (for example, if the juvenile has severe mental health problems). A guardian ad litem may also be appointed whenever a juvenile appears without a parent. See Martin, Dean & Webster, *Michigan Court Rules Practice* (3d ed), § 5.993, p 807.

12.5 Time Requirements for Dispositional Hearings

MCR 5.943(B) states that the interval, if any, between a plea of admission or trial and a disposition shall be within the discretion of the court. If the juvenile is detained, however, the interval may be no more than 35 days. This deadline may be extended for good cause.

The dispositional phase of proceedings may immediately follow the adjudicative phase where the parties do not object, and where they have notice of the proceedings and an opportunity to present suggestions and objections. *In re Hardin*, 184 Mich App 107, 109 (1990), and *In re Chapel*, 134 Mich App 308, 314 (1984).*

*See, however, Section 12.7, below, discussing a victim's right to make an impact statement.

12.6 Evidentiary Standards at Dispositional Hearings

MCR 5.943(C)(1)–(3) govern the admissibility of evidence at dispositional hearings.

A. All Relevant and Material Evidence Is Admissible

At the dispositional hearing, all relevant and material evidence, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value, even though such evidence may not be admissible at trial. MCR 5.943(C)(1). This court rule does not mandate consideration of any particular report. Because a juvenile dispositional proceeding is not criminal or governed by the Code of Criminal Procedure, the Family Division need not consider a sentencing information report as required for adults. *In re Lowe*, 177 Mich App 45, 47 (1989).

The juvenile or the juvenile's attorney and the petitioner must be afforded an opportunity to examine and controvert written reports so received and, in the court's discretion, may be allowed to cross-examine individuals making reports when such individuals are reasonably available. MCR 5.943(C)(2). The proper procedure for the court to follow is to take sworn testimony on the record, allow defense counsel and the prosecuting attorney to argue for an appropriate disposition, and articulate reasons for the disposition imposed. *In re Chapel*, 134 Mich App 308, 314–15 (1984), relying on *People v Coles*, 417 Mich 523

(1983). See also *In re Barber*, 168 Mich App 661, 665–66 (1988) (duty of juvenile court judge to respond to allegations of inaccuracy in social report is analogous to duty of judge in criminal case to respond to alleged inaccuracies in presentence report).

NOTE: Sworn testimony may often not be taken at dispositional hearings. A probation officer or caseworker assigned to the juvenile's case may submit a report and recommendation for disposition. Defense counsel may make a statement agreeing with or disputing the recommendation. In addition to the probation officer's or caseworker's report, the court may receive reports from the juvenile's school, psychological evaluations, substance abuse evaluations, and, if commitment to the Family Independence Agency is contemplated, the classification and assignment report submitted by a delinquency services worker.

B. Evidentiary Privileges Not Applicable at Dispositional Hearings

No assertion of evidentiary privilege, other than the privilege between attorney and client, shall prevent the receipt and use, at the dispositional phase, of materials prepared pursuant to a court-ordered examination, interview, or course of treatment. MCR 5.943(C)(3). Thus, when the court orders a person to be examined by a physician, psychiatrist, social worker, or other professional, the professional's interview and opinion cannot be excluded from the dispositional hearing on the theory that it is privileged. *In re Lowe*, 177 Mich App 45, 47 (1989).

Moreover, MCR 5.924 provides that persons or agencies providing testimony, reports, or other information relevant and material to the proceedings following authorization of a petition, and at the request of the court, are immune from any subsequent legal action with respect to furnishing the information to the court.

12.7 Victim's Right to Make Impact Statement*

The Juvenile Crime Victim's Rights Act, MCL 780.781 et seq.; MSA 28.1287(781) et seq., gives victims the right to make impact statements and to receive notice of the dispositions that are ordered.

If a disposition report is prepared,* the victim shall be permitted to submit a written or oral impact statement to the person preparing the report for use by that person in preparing the report. If the victim requests, a copy of his or her impact statement shall be included in the disposition report. MCL 780.792; MSA 28.1287(792).

The victim shall be informed that his or her impact statement may include, but shall not be limited to, the following:

- (a) an explanation of the nature and extent of any physical, psychological, or emotional harm or trauma suffered by the victim;

*See Section 7.19 (applicability of JCVRA).

*See Section 12.6(A), above.

- (b) an explanation of the extent of any economic loss or property damage suffered by the victim;
- (c) an opinion of the need for, and extent of, restitution, and whether the victim has applied for or received compensation for loss or damage; and
- (d) the victim's recommendation for an appropriate disposition.

MCL 780.791(3)(a)–(d); MSA 28.1287(791)(3)(a)–(d).

MCL 780.793(1); MSA 28.1287(793)(1), in turn, provides that the victim shall have the right to appear and make an oral impact statement at the disposition of the juvenile.

If requested by the victim, the prosecuting attorney or the court shall notify the victim of the disposition not more than 14 days after it is made. MCL 780.793(2); MSA 28.1287(793)(2).

Part II — Dispositional Options

NOTE: The options listed below are broad statutory categories into which a wide variety of local programs for the care, treatment, or detention of juveniles may fall.

12.8 Dispositional Options Available to Court

*See Form JC 14.

MCR 5.943(E)(1) states that if the juvenile has been found to have committed an offense, the court may enter an order of disposition* as provided by MCL 712A.18; MSA 27.3178(598.18). “Offense” is defined as an act that violates a criminal statute or ordinance, an act that violates MCL 712A.2(a) or (d); MSA 27.3178(598.2)(a) or (d) (status offense or wayward minor), or an act that violates a traffic law other than a civil infraction. MCR 5.903(B)(4).

MCL 712A.18(1); MSA 27.3178(598.18)(1), provides that the court may order any of several types of disposition appropriate for the welfare of the juvenile and society in view of the facts proven and ascertained. The court's dispositional options are as follows:

A. Warning to Juvenile and Dismissal of Petition

The court may warn the juvenile or the juvenile's parents, guardian, or custodian and dismiss the petition. MCL 712A.18(1)(a); MSA 27.3178(598.18)(1)(a).

However, if the juvenile's offense has resulted in financial damages to any victims, then the court must order the juvenile to make restitution pursuant to Juvenile Crime Victim's Rights Act. See MCL 712A.18(7); MSA 27.3178(598.18)(7).*

*See Section 12.12, below (requirements for ordering restitution).

B. In-Home Probation*

The court may place the juvenile on probation, or under supervision, in the juvenile's own home or in the home of an adult who is related to the juvenile. MCL 712A.18(1)(b); MSA 27.3178(598.18)(1)(b).

*See Section 12.13, below, for a discussion of restitution and community service or employment as a condition of probation.

As used in this subsection, "related" means being a parent, grandparent, brother, sister, stepparent, stepsister, stepbrother, uncle, or aunt by blood, marriage, or adoption. The court shall order the terms and conditions of probation or supervision, including reasonable rules for the conduct of the parents, guardian, or custodian, if any, as the court deems necessary for the physical, mental, or moral well-being and behavior of the juvenile. MCL 712A.18(1)(b); MSA 27.3178(598.18)(1)(b).*

*See Section 12.15, below (court has discretion to order reimbursement of cost of service) and Chapter 14 (probation violations).

C. Placement in Foster Care*

The court may place the juvenile in a suitable foster care home subject to the court's supervision. MCL 712A.18(1)(c); MSA 27.3178(598.18)(1)(c).

*See Section 15.4 for a discussion of dispositional review hearings when a juvenile is placed in foster care.

D. Commitment to a Private Institution or Agency

The court may place the juvenile in or commit the juvenile to a private institution or agency approved or licensed by the Department of Consumer and Industry Services for the care of juveniles of similar age, sex, and characteristics. MCL 712A.18(1)(d); MSA 27.3178(598.18)(1)(d).*

*See Section 12.10, below (special requirements for placement outside of state).

The court must transmit with the order of disposition a summary of its information concerning the child. MCL 712A.24; MSA 27.3178(598.24).

Committing the juvenile to a private institution or agency does not divest the Family Division of jurisdiction unless the juvenile is adopted in a manner provided by law. MCL 712A.5; MSA 27.3178(598.5).

E. Commitment to a Public Institution or Agency

The court may commit* the juvenile to a public institution, county facility, institution operated as an agency of the court or county, or agency authorized by law to receive juveniles of similar age, sex, and characteristics. MCL 712A.18(1)(e); MSA 27.3178(598.18)(1)(e).

*See Form JC 25.

The court must transmit with the order of disposition a summary of its information concerning the child. MCL 712A.24; MSA 27.3178(598.24).

*See Section 12.14, below, for a discussion of reimbursement for costs of care outside home.

MCL 712A.18(1)(e); MSA 27.3178(598.18)(1)(e), further provides that in every order of commitment under this provision to a state institution or agency described in the Youth Rehabilitation Services Act, the court shall name the superintendent of the institution to which the juvenile is committed as a special guardian to receive benefits due the juvenile from the government of the United States, and the benefits shall be used to the extent necessary to pay for the portions of the cost of care in the institution that the parent or parents are found unable to pay.*

NOTE: The decision to commit the juvenile as a state ward or to place the juvenile under the care and supervision of the Family Independence Agency may impact the availability and sources of funding for the juvenile's care.

F. Orders for Health Care

The court may provide the juvenile with medical, dental, surgical, or other health care, in a local hospital if available, or elsewhere, maintaining as much as possible a local physician-patient relationship, and with clothing and other incidental items as the court considers necessary. MCL 712A.18(1)(f); MSA 27.3178(598.18)(1)(f).

G. Orders to Parents to Refrain From Conduct Harmful to Juvenile

The court may order the parents, guardian, custodian, or any other person to refrain from continuing conduct that the court determines has caused or tended to cause the juvenile to come within or to remain under the court's jurisdiction, or that obstructs placement or commitment of the juvenile pursuant to a dispositional order. MCL 712A.18(1)(g); MSA 27.3178(598.18)(1)(g).

See also MCL 712A.6; MSA 27.3178(598.6) (Family Division has jurisdiction over adults and may make such orders affecting adults the court finds necessary for physical, mental, or moral well-being of children under its jurisdiction), and *In re Macomber*, 436 Mich 386, 393, 398 (1990) (Family Division's authority to make such orders extends beyond remedies listed in MCL 712A.18; MSA 27.3178(598.18)).

H. Appointment of Guardian for Juvenile

The court may appoint a guardian under MCL 700.424; MSA 27.5424, pursuant to a petition filed with the court by a person interested in the welfare of the juvenile. If the court appoints a guardian pursuant to this subdivision, it may enter an order dismissing the petition under this chapter. MCL 712A.18(1)(h); MSA 27.3178(598.18)(1)(h).

I. Order for Community Service*

The court may order the juvenile to engage in community service. MCL 712A.18(1)(i); MSA 27.3178(598.18)(1)(i).

J. Order to Pay a Civil Fine

The court may order the juvenile to pay a civil fine in the amount of the penal fine provided by the ordinance or law that was violated by the juvenile. MCL 712A.18(1)(j); MSA 27.3178(598.18)(1)(j).

K. Order for Court Costs*

The court may order the juvenile to pay court costs. MCL 712A.18(1)(k); MSA 27.3178(598.18)(1)(k).

L. Order to Parents to Participate in Treatment

The court may order the juvenile's parent or guardian to personally participate in treatment reasonably available in the parent's or guardian's location. MCL 712A.18(1)(l); MSA 27.3178(598.18)(1)(l).

M. Placement of Juvenile in Juvenile Boot Camp

The court may place the juvenile in and order the juvenile to complete satisfactorily a program of training in a juvenile boot camp established by the Family Independence Agency under the Juvenile Boot Camp Act. MCL 712A.18(1)(m); MSA 27.3178(598.18)(1)(m).

To place a juvenile in a juvenile boot camp program, the court shall determine all of the following:

- (i) placement in a juvenile boot camp will benefit the juvenile;
- (ii) the juvenile is physically able to participate in the program;
- (iii) the juvenile does not appear to have any mental handicap that would prevent participation in the program;
- (iv) the juvenile will not be a danger to other juveniles in the boot camp; and
- (v) there is an opening in a juvenile boot camp program.

MCL 712A.18(1)(m)(i)–(v); MSA 27.3178(598.18)(1)(m)(i)–(v).

The court may order the juvenile to remain in the boot camp for a period of 90–180 days. Following satisfactory completion of the juvenile boot camp program, the juvenile shall complete an additional period of not less than 120 days or more than 180 days of intensive supervised

*See Section 12.13, below, for a discussion of restitution and community service or employment as condition of probation.

*See Section 20.31 for a discussion of orders for costs in criminal proceedings.

community reintegration in the juvenile's local community. MCL 712A.18(1)(m); MSA 27.3178(598.18)(1)(m).

A juvenile shall not be placed in a juvenile boot camp pursuant to an order of disposition more than once, except that a juvenile returned to the court for a medical condition or because there was not an opening in a juvenile boot camp program may be placed again in the juvenile boot camp program after the medical condition is corrected or an opening becomes available. MCL 712A.18(14); MSA 27.3178(598.18)(14).

12.9 Mandatory Detention Required for Juvenile's Use of a Firearm

Under MCL 712A.18g(1)(c); MSA 27.3178(598.18g)(1)(c), and MCR 5.943(E)(4)(a), a juvenile must be committed to a detention facility for a specified period of time if the court finds that the juvenile used a firearm during a criminal violation. "Detention facility" is not defined in either the statute or court rule. However, it would apparently include a court, county, or state facility. See MCL 712A.16; MSA 27.3178(598.16), and MCL 803.222(c); MSA 25.399(222)(c).

The period of time in detention shall not exceed the length of the sentence that could have been imposed if the juvenile had been sentenced as an adult for the offense. MCL 712A.18g(2); MSA 27.3178(598.18g)(2), and MCR 5.943(E)(4)(b).

"Firearm" means any weapon from which a dangerous projectile may be propelled using explosives, gas, or air as a means of propulsion, except any smooth-bore rifle or handgun designed and manufactured exclusively for propelling BB's not exceeding .177 caliber by means of spring, gas, or air. MCL 712A.18g(3); MSA 27.3178(598.18g)(3), and MCR 5.943(E)(4)(c).

*See Chapter 21.

NOTE 1: This provision does not apply to juveniles sentenced as adults following conviction in designated cases. MCL 712A.18g(1); MSA 27.3178(598.18g)(1), and MCR 5.943(E)(4)(a). However, the provision does appear to apply to cases in which the court delays imposition of sentence and places the juvenile on probation in designated cases.* MCL 712A.18(1)(n); MSA 27.3178(598.18)(1)(n), provides that in such cases, the court may order any probation terms and conditions it considers appropriate, including any disposition under MCL 712A.18; MSA 27.3178(598.18). Thus, the court could order mandatory detention under MCL 712A.18g; MSA 27.3178(598.18g). See also MCR 5.943(4)(a)(ii) (mandatory detention provision applies to juveniles "adjudicated or convicted of" a criminal offense).

NOTE 2: "Use" of a firearm is not defined in the statute or court rule. However, comparison of these provisions to the felony firearm statute, MCL 750.227b; MSA 28.424(2), may be instructive. The felony firearm statute prohibits possession of a firearm during the commission or attempted commission of an offense.

12.10 Special Requirements When a Juvenile Is Placed Outside of Michigan

Where desirable or necessary, the court may place the juvenile in or commit him or her to a private institution or agency incorporated under the laws of another state and approved or licensed by the state's department of social welfare, or the equivalent approving or licensing agency, for the care of children of similar age, sex, and characteristics. MCL 712A.18a; MSA 27.3178(598.18a).

MCR 5.943(E)(2)(a)–(c) provides, however, that before a juvenile may be placed in an institution outside of Michigan, the court must find that:

- (a) institutional care is in the best interests of the juvenile;
- (b) equivalent facilities to meet the juvenile's needs are not available within Michigan; and
- (c) the placement will not cause undue hardship.

12.11 Dispositions in Status Offense Cases

Juveniles who are found to come within the court's jurisdiction as status offenders must not be detained in any secure facility unless the court finds that the juvenile willfully violated a court order, and, after a hearing on the record, that there is not a less restrictive alternative more appropriate to the needs of the juvenile. MCL 712A.15(3); MSA 27.3178(598.15)(3). Thus, at the initial disposition, juveniles who are found to be status offenders may not be ordered detained in a secure facility unless they have already violated a court order. Typically, status offenders are not placed in secure facilities until after they have run away from nonsecure facilities and the court finds that there is no other alternative.*

An Indian child charged with a status offense* shall not be removed from the home unless there is clear and convincing evidence, including testimony by qualified expert witnesses, that services designed to prevent the break-up of the Indian family have been furnished to the family and that continual custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. See MCR 5.980(C)(1)–(2), 25 USC 1912 (d) and (e), *In re Kreft*, 148 Mich App 682, 686–93 (1986), and *In re Jacobs*, 433 Mich 24, 39–42 (1989).

The Indian child, if removed from his or her home, shall be placed, in descending order of preference, with:

- F a member of the child's extended family;*
- F a foster home licensed, approved, or specified by the child's tribe;
- F an Indian foster family licensed or approved by a non-Indian licensing authority;

*See also Section 3.9, Note, for consideration of prior adjudications when ordering detention for status offenders.

*See Section 2.3 for a definition of status offenses.

*See 25 USC 1903(2).

F an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the child's needs.

*See Form JC 51.

In addition, the court may order another placement for good cause shown. See 25 USC 1915.*

Part III — Orders for Restitution and Reimbursement of Costs

12.12 Requirements for Ordering Restitution

MCL 712A.18(7); MSA 27.3178(598.18)(7), states that the court shall order the juvenile or the juvenile's parent to pay restitution as provided in MCL Sections 30 and 31 of the Juvenile Code, and in Sections 794 and 795 of the Juvenile Crime Victim's Rights Act.

A. Persons Entitled to Restitution

Restitution is mandatory for any victim of the course of conduct that gave rise to the juvenile's adjudication. MCL 712A.30(2); MSA 27.3178(598.30)(2), and MCL 780.794(2); MSA 28.1287(794)(2). Interpreting identical language in the adult Crime Victim's Rights Act, the Michigan Supreme Court has held that the term "any victim" should be broadly construed to include all persons or organizations who suffered a financial loss as a result of "the course of conduct" that gave rise to defendant's conviction. *People v Gahan*, 456 Mich 264, 270–72 (1997).

Victim is defined as an individual, sole proprietorship, partnership, corporation, association, governmental entity, or any other legal entity that suffers direct physical or financial harm as a result of a juvenile offense. MCL 712A.30(1)(b); MSA 27.3178(598.30)(1)(b), and MCL 780.794(1)(b); MSA 28.1287(794)(1)(b).

If the victim is deceased, the court shall order restitution to the victim's estate. MCL 712A.30(7); MSA 27.3178(598.30)(7), and MCL 780.794(7); MSA 28.1287(794)(7).

B. Amount of Restitution Required

MCL 712A.30(2); MSA 27.3178(598.30)(2), and MCL 780.794(2); MSA 28.1287(794)(2), state that at the dispositional hearing for a juvenile offense, the court shall order, in addition to or in lieu of any other disposition authorized by law, that the juvenile shall make full restitution to any victim of the juvenile's course of conduct that gives rise to the disposition or to the victim's estate.

The Michigan Supreme Court has interpreted identical provisions of the adult Crime Victim's Rights Act. In *People v Gahan*, 456 Mich 264 (1997), the trial court ordered defendant to pay a total of \$25,000.00 in restitution. Defendant was ordered to compensate more than 10 different victims whom he had defrauded in a similar fashion, even though he was only convicted of two counts of embezzlement. The Supreme Court unanimously affirmed, holding that the phrase "any victim of the defendant's course of conduct" should be given the broad meaning that was intended by the Legislature. The Court concluded that "the defendant should compensate for all the losses attributable to the illegal scheme that culminated in his conviction, even though some of the losses were not the factual foundation of the charge that resulted in conviction." *Id.*, at 272.

C. Time Requirements for Making Restitution

If not otherwise provided by the court, restitution shall be made immediately. However, the court may allow the juvenile to make restitution under this section within a specified period or in specified installments. MCL 712A.30(10); MSA 27.3178(598.30)(10), and MCL 780.794(10); MSA 28.1287(794)(10).

A juvenile shall not be detained for a violation of probation, or otherwise, for failure to pay restitution as ordered under this section unless the court determines that the juvenile has the resources to pay the ordered restitution and has not made a good faith effort to do so. MCL 712A.30(14); MSA 27.3178(598.30)(14), and MCL 780.794(14); MSA 28.1287(794)(14).

The Family Division has the power to punish for contempt of court* in accordance with MCL 600.1701 et seq.; MSA 27A.1701 et seq., any person who wilfully violates, neglects, or refuses to obey and perform any order or process the court has made or issued while enforcing the provisions of the Juvenile Code. MCL 712A.26; MSA 27.3178(598.26).

*See Form JC 40.

The court has jurisdiction over contempt proceedings involving contempt of its orders even where the contemnor is over 19 years of age at the time of the hearing. *In re Summerville*, 148 Mich App 334, 341 (1986). A juvenile over age 17 may also be jailed for contempt of court. See MCL 712A.16; MSA 27.3178(598.16).

NOTE: The court may punish by the contempt power even after it has terminated jurisdiction over the juvenile. See Form JC 36 (Request and Order Terminating Court Jurisdiction), where the right to enforce payments of any delinquent account or unpaid reimbursement order is reserved. For detailed information on contempt proceedings, see *Benchguide on Contempt of Court* (MJI, 1987).

D. Restitution Where Offense Results in Property Destruction

If a juvenile offense results in damage to or loss or destruction of property of a victim of the juvenile offense, or results in the seizure or impoundment of property of a victim of the juvenile offense, the order of restitution may require that the juvenile do one or more of the following, as applicable:

(a) return the property to the owner of the property or to a person designated by the owner;

(b) if return of all of the property is impossible, impractical, or inadequate, pay an amount equal to the greater of Subdivision (i) or (ii), less the value of any portion of the property that was returned:

(i) the value of the property on the date of the damage, loss, or destruction, or

(ii) the value of the property on the date of disposition;

(c) pay the costs of the seizure or impoundment, or both.

MCL 712A.30(3)(a)–(c); MSA 27.3178(598.30)(3)(a)–(c), and MCL 780.794(3)(a)–(c); MSA 28.1287(794)(3)(a)–(c).

E. Restitution Where Offense Results in Physical or Psychological Injury

If a juvenile offense results in physical or psychological injury to a victim, the order of restitution may require that the juvenile do one or more of the following, as applicable:

(a) pay an amount equal to the cost of actual medical and related professional services and devices relating to physical and psychological care;

(b) pay an amount equal to the cost of actual physical and occupational therapy and rehabilitation;

(c) reimburse the victim or the victim's estate for after-tax income loss suffered by the victim as a result of the juvenile offense;

(d) pay an amount equal to the cost of psychological and medical treatment for members of the victim's family that has been incurred as a result of the juvenile offense;

(e) pay an amount equal to the costs of actual homemaking and child care expenses incurred as a result of the juvenile offense.

MCL 712A.30(4)(a)–(e); MSA 27.3178(598.30)(4)(a)–(e), and MCL 780.794(4)(a)–(e); MSA 28.1287(794)(4)(a)–(e).

MCL 712A.30(5); MSA 27.3178(598.30)(5), and MCL 780.794(5); MSA 28.1287(794)(5), state that if a juvenile offense resulting in bodily injury also results in the death of a victim, the order of restitution may require that the juvenile pay an amount equal to the cost of actual funeral and related services.

If the victim is deceased, the court shall order restitution to the victim's estate. MCL 712A.18(7); MSA 27.3178(598.18)(7), and MCL 780.794(7); MSA 28.1287(794)(7).

F. Orders for Services by Juvenile in Lieu of Money

If the victim or the victim's estate consents, the order of restitution may require that the juvenile make restitution in services in lieu of money. MCL 712A.30(6); MSA 27.3178(598.30)(6), and MCL 780.794(6); MSA 28.1287(794)(6).

G. Orders for Restitution to Individuals or Organizations That Provide Money or Services to Victims

The court shall order restitution to the crime victims compensation board or to any individuals, partnerships, corporations, associations, governmental entities, or other legal entities that have compensated the victim or the victim's estate for a loss incurred by the victim to the extent of the compensation paid for that loss. The court shall also order restitution for the costs of services provided to persons or entities that have provided services to the victim as a result of the offense. Services that are subject to restitution under this subsection include, but are not limited to, shelter, food, clothing, and transportation. MCL 712A.30(8); MSA 27.3178(598.30)(8), and MCL 780.794(8); MSA 28.1287(794)(8).

However, an order of restitution shall require that all restitution to a victim or victim's estate under the order be made before any restitution to any other person or entity under that order is made. The court shall not order restitution to be paid to a victim or a victim's estate if the victim or victim's estate has received or is to receive compensation for that loss, and the court shall state on the record with specificity the reasons for its actions. If an entity entitled to restitution under this subsection for compensating the victim or the victim's estate cannot or refuses to be reimbursed for that compensation, the restitution paid for that entity shall be deposited in the crime victim's rights assessment fund or its successor fund. MCL 712A.30(8); MSA 27.3178(598.30)(8), and MCL 780.794(8); MSA 28.1287(794)(8).

H. Required Reports by Probation Officers

*See Forms JC 34 and 37.

In determining the amount of restitution to order, the court shall consider the amount of loss sustained by any victim as a result of the offense. The court may order the probation officer to obtain information pertaining to the amounts of loss. The probation officer shall include the information collected in the disposition report or in a separate report, as the court directs. The court shall disclose to the juvenile, the juvenile's supervisory parent, and the prosecuting attorney all portions of the disposition or other report pertaining to the amount of loss. MCL 712A.31(1)–(3); MSA 27.3178(598.30a)(1)–(3), and MCL 780.795(1)–(3); MSA 28.1287(795)(1)–(3).*

I. Hearing Requirements and Burden of Proof

*See Section 12.12(M), below (order of restitution directed to parent).

Any dispute as to the proper amount or type of restitution shall be resolved by the court by a preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the juvenile offense shall be on the prosecuting attorney. The burden of demonstrating the financial resources of the juvenile's supervisory parent and any other moral or legal financial obligation of the parent shall be on the supervisory parent. MCL 712A.31(4); MSA 27.3178(598.30a)(4), and MCL 780.795(4); MSA 28.1287(795)(4).*

If a criminal defendant disputes the amount of restitution ordered, he or she must raise a proper objection and request an evidentiary hearing. The court is not required to order sua sponte an evidentiary hearing to determine the proper amount of restitution that is due. *People v Grant*, 455 Mich 221, 243 (1997) (construing provisions of the adult Crime Victim's Rights Act). The trial judge is entitled to rely on the information in the presentence report, which is presumed to be accurate unless the defendant effectively challenges that information. *Id.*, at 233–34. If an evidentiary hearing is held, the rules of evidence do not apply. MRE 1101(b)(3).

NOTE: The 1996 amendment to MCL 780.767(1); MSA 28.1287(767)(1), of the adult Crime Victim's Rights Act eliminated the requirement that the trial court must consider the financial resources, financial needs, and earning ability of the defendant when deciding the amount of restitution. In contrast, under the Juvenile Crime Victim's Rights Act, the Family Division is allowed to consider the supervisory parent's ability to pay restitution when determining the amount of restitution to order.

J. Liability of Conspirators for Losses Arising Out of the Conspiracy

In *People v Grant*, 455 Mich 221 (1997), the Michigan Supreme Court examined the liability of conspirators under the restitution provisions of the adult Crime Victim's Rights Act. Defendant pleaded guilty to conspiracy to utter and publish and was ordered to pay \$175,000.00 in restitution. Defendant appealed, arguing that he played a limited role in

the conspiracy and should not be liable for the entire \$175,000.00. The Supreme Court disagreed and held that each conspirator is criminally responsible for the acts of his co-conspirators committed in furtherance of the conspiracy. *Id.*, at 236.

K. Modification of Restitution Orders After Dispositional Hearing

A juvenile who is required to pay restitution and who is not in willful default of the payment of the restitution may at any time petition the court to modify the method of payment.* If the court determines that payment under the order will impose a manifest hardship on the juvenile or his or her immediate family, the court may modify the method of payment. MCL 712A.30(12); MSA 27.3178(598.30)(12), and MCL 780.794(12); MSA 28.1287(794)(12).

*See Form JC 54.

L. Enforcement and Collection of Restitution Orders

An order of restitution remains effective until the amount is satisfied in full. An order of restitution is a judgment and lien against all property of the individual ordered to pay restitution for the amount specified in the order of restitution. The lien may be recorded as provided by law. An order of restitution may be enforced by the prosecuting attorney, a victim, a victim's estate, or any other person or entity named in the order to receive the restitution in the same manner as a judgment in a civil action or a lien. MCL 712A.30(13); MSA 27.3178(598.30)(13), and MCL 780.794(13); MSA 28.1287(794)(13).*

*See Sections 15.9(A) (victim notification) and 12.8(A) (restitution is required even though petition dismissed).

M. Order of Restitution Directed to a Parent

If the court determines that the juvenile is or will be unable to pay all of the restitution ordered, after notice to the juvenile's parent and an opportunity for the parent to be heard, the court may order the parent or parents having supervisory responsibility for the juvenile at the time of the acts upon which an order of restitution is based to pay any portion of the restitution ordered that is outstanding. An order under this subsection does not relieve the juvenile of his or her obligation to pay restitution, but the amount owed by the juvenile shall be offset by any amount paid by his or her parent. As used in this subsection, "parent" does not include a foster parent. MCL 712A.30(15); MSA 27.3178(598.30)(15), and MCL 780.794(15); MSA 28.1287(794)(15).

NOTE 1: If a victim of the juvenile's offense is the juvenile's parent, the court may choose not to order the parent to pay restitution under these provisions.

If the court orders a parent to pay restitution, the court shall take into account the financial resources of the parent and the burden that the payment of restitution will impose, with due regard to any other moral or legal financial obligations that parent may have. If a parent is required

*See Chapter 8 for a discussion of time and notice requirements.

to pay restitution, the court shall provide for payment to be made in specified installments and within a specified period of time. MCL 712A.30(16); MSA 27.3178(598.30)(16), and MCL 780.794(16); MSA 28.1287(794)(16).

An order directed to a parent shall not be binding unless the parent has been given an opportunity for a hearing pursuant to the issuance of a summons or notice as provided in sections 12 and 13 of the Juvenile Code. MCL 712A.18(4); MSA 27.3178(598.18)(4).*

A parent who has been ordered to pay restitution under MCL 712A.30(15); MSA 27.3178(598.30)(15), may petition the court for a modification of the amount of restitution owed by the parent or for a cancellation of any unpaid portion of the parent's obligation. The court shall cancel all or part of the parent's obligation due if the court determines that payment of the amount due will impose a manifest hardship on the parent. MCL 712A.30(17); MSA 27.3178(598.30)(17), and MCL 780.794(17); MSA 28.1287(794)(17).

NOTE 2: The 1996 amendments to the restitution provisions of the adult Crime Victim's Rights Act significantly changed the modification provisions of that act. Prior to the 1996 amendments, the trial court was permitted to cancel unpaid portions of restitution orders if the court found that payment of such orders would cause a manifest hardship on defendant or his or her immediate family. The current statutes only permit the trial court to modify the method of payments, but not the amount of payment. Under the Juvenile Crime Victim's Rights Act, however, the court still retains the ability to modify the amount of restitution a parent was ordered to pay. Nonetheless, the court may not modify the amount of restitution the juvenile is required to pay. See MCL 712A.30(12); MSA 27.3178(598.30)(12), discussed at Section 12.12(K), above. Therefore, a court may have cases where the total amount of restitution owed by the juvenile is greater than the amount owed by his or her supervisory parent.

N. Required Set Offs for Amounts Later Recovered by Victim

Any amount paid to a victim or a victim's estate under an order of restitution shall be set off against any amount later recovered as compensatory damages by the victim or the victim's estate in any federal or state civil proceeding and shall reduce the amount payable to a victim or a victim's estate by an award from the crime victim's compensation board made after an order of restitution under this section. MCL 712A.30(9); MSA 27.3178(598.30)(9), and MCL 780.794(9); MSA 28.1287(794)(9).

12.13 Restitution and Community Service or Employment Ordered As a Condition of Probation

If the court imposes restitution as a condition of probation, the court must require the juvenile to do either of the following as an additional condition of probation:

- (a) engage in community service or, with the victim's consent, perform services for the victim, or
- (b) seek and maintain paid employment and pay restitution to the victim from the earnings of that employment.

MCL 712A.18(8)(a)–(b); MSA 27.3178(598.18)(8)(a)–(b).

See also MCL 712A.30(11); MSA 27.3178(598.30)(11), and MCL 780.794(11); MSA 28.1287(794)(11), which provide that if the juvenile is placed on probation, any restitution ordered under this section shall be a condition of that probation.

A. Biannual and Final Review of Restitution As Condition of Probation

Where restitution is ordered as a condition of probation, the juvenile caseworker or probation officer assigned to the case must review the case not less than twice yearly to ensure that restitution is being paid as ordered. The final review must be conducted not less than 60 days before the expiration of the probationary period. MCL 712A.30(18); MSA 27.3178(598.30)(18), and MCL 780.794(18); MSA 28.1287(794)(18).

If the juvenile caseworker or probation officer determines that the restitution is not being paid as ordered, he or she must file a written report of the violation with the court on a form prescribed by the State Court Administrative Office.* The report shall include a statement of the amount of the arrearage and any reasons for the arrearage that are known by the juvenile caseworker or probation officer. The juvenile caseworker or probation officer must also immediately provide a copy of the report to the prosecuting attorney. If a motion is filed or other proceedings are initiated to enforce payment of restitution and the court determines that restitution is not being paid or has not been paid as ordered by the court, the court shall promptly take action necessary to compel compliance. MCL 712A.30(18); MSA 27.3178(598.30)(18), and MCL 780.794(18); MSA 28.1287(794)(18).

*See Form
MC 258.

B. Revocation of Probation for Failure to Comply With Restitution Order

The court may revoke probation if the juvenile fails to comply with the order and if the juvenile has not made a good faith effort to comply with the order. In determining whether to revoke probation, the court shall consider the juvenile's employment status, earning ability, and financial

*See Section 12.12(C), above, for a discussion of contempt proceedings.

resources, the willfulness of the juvenile's failure to pay, and any other special circumstances that may have a bearing on the juvenile's ability to pay. MCL 712A.30(11); MSA 27.3178(598.30)(11), and MCL 780.794(11); MSA 28.1287(794)(11).

A juvenile shall not be detained for a violation of probation for failure to pay restitution as ordered unless the court determines that the juvenile has the resources to pay the ordered restitution and has not made a good faith effort to do so. MCL 712A.30(14); MSA 27.3178(598.30)(14), and MCL 780.794(14); MSA 28.1287(794)(14).*

See also MCL 712A.18(9); MSA 27.3178(598.18)(9), which provides that if the court finds that the juvenile is in intentional default of the payment of restitution, or if a juvenile who is ordered to engage in community service intentionally refuses to perform the required community service, the court may revoke or alter the terms and conditions of probation.

12.14 Orders for Reimbursement of Costs When Juvenile Is Placed Outside of Home

*See Forms JC 14 and 25.

An order of disposition placing a juvenile in or committing a juvenile to care outside of the juvenile's home and under state or court supervision shall contain a provision for reimbursement by the juvenile, parent, guardian, or custodian to the court for the cost of care or service. MCL 712A.18(2); MSA 27.3178(598.18)(2).*

A. Amount of Reimbursement

*See Forms JC 34, 37, and 38.

The order shall be reasonable, taking into account both the income and resources of the juvenile, parent, guardian, or custodian.*

*The guidelines and model schedule are available through SCAO.

The amount may be based upon the guidelines and model schedule created by the State Court Administrator. MCL 712A.18(2); MSA 27.3178(598.18)(2). The guidelines and model schedule may be used when a juvenile is placed on probation within or outside of the home. MCL 712A.18(6); MSA 27.3178(598.18)(6).*

If the juvenile is receiving an adoption support subsidy pursuant to MCL 400.115j; MSA 16.490(25j), the amount of reimbursement ordered shall not exceed the amount of the support subsidy. MCL 712A.18(2); MSA 27.3178(598.18)(2).

B. Duration of Reimbursement Order

The reimbursement provision applies during the entire period the juvenile remains in care outside of the juvenile's own home and under state or court supervision, unless the juvenile is in the permanent custody of the court. MCL 712A.18(2); MSA 27.3178(598.18)(2).

MCL 712A.18(2); MSA 27.3178(598.18)(2), does not establish an unqualified mandate that a parent reimburse the state for the entire cost it incurs in caring for the parent's child. The amount need only be reasonable, considering the criteria enumerated in the statute. *In re Brzezinski*, 454 Mich 889 (1997) (reversing by summary disposition the Court of Appeals and adopting the dissent by Griffin, PJ, at 214 Mich App 652, 675 (1995)). However, because the reimbursement order is included in the order of disposition, the court must necessarily order reimbursement before it is aware of the total amount of expenses that the state will incur in caring for the child. Thus, the provision of MCL 712A.18(2); MSA 27.3178(598.18)(2), that states that the "reimbursement provision applies during the entire period the juvenile remains in care outside of the juvenile's own home" provides a mechanism by which the court may determine the total amount of the parent's reimbursement obligation. *Id.*, at 677. Moreover, MCL 712A.18(2); MSA 27.3178(598.18)(2), provides that collection of the balance due on reimbursement orders may be made after the juvenile is released or discharged from care. See also *In re Macomber*, 436 Mich 386, 394 (1990) (reimbursement orders under MCL 712A.18(2); MSA 27.3178(598.18)(2), and MCL 712A.18(3); MSA 27.3178(598.18)(3), indicate broad power of court to order parents to act in interest of child).

C. Collection and Disbursement of Amounts Collected

The court shall provide for the collection of all amounts ordered to be reimbursed, and the money collected shall be accounted for and reported to the county board of commissioners. Collections to cover delinquent accounts or to pay the balance due on reimbursement orders may be made after a juvenile is released or discharged from care outside the juvenile's own home and under state or court supervision. Twenty-five percent of all amounts collected pursuant to an order entered under this subsection shall be credited to the appropriate fund of the county to offset the administrative cost of collections. MCL 712A.18(2); MSA 27.3178(598.18)(2).

The balance of all amounts collected pursuant to an order entered under this subsection shall be divided in the same ratio in which the county, state, and federal government participate in the cost of care outside the juvenile's own home and under state or court supervision. MCL 712A.18(2); MSA 27.3178(598.18)(2).

The court may also collect benefits paid by the government of the United States to the parent of a juvenile for the cost of care of a court ward. MCL 712A.18(2); MSA 27.3178(598.18)(2).

Money collected for juveniles placed with or committed to the Family Independence Agency shall be accounted for and reported on an individual juvenile basis. MCL 712A.18(2); MSA 27.3178(598.18)(2).

D. Delinquent Accounts

*See Form JC 61.

In cases of delinquent accounts, the court may also enter an order to intercept state or federal tax refunds of a juvenile, parent, guardian, or custodian and initiate the necessary offset proceedings in order to recover the cost of care or service.* MCL 712A.18(2); MSA 27.3178(598.18)(2).

*See Form JC 60.

The court shall send to the person who is the subject of the intercept order advanced written notice* of the proposed offset. The notice shall include notice of the opportunity to contest the offset on the grounds that the intercept is not proper because of a mistake of fact concerning the amount of the delinquency or the identity of the person subject to the order. MCL 712A.18(2); MSA 27.3178(598.18)(2).

*See Form JC 62.

The court shall provide for the prompt reimbursement of an amount withheld in error or an amount found to exceed the delinquent amount.* MCL 712A.18(2); MSA 27.3178(598.18)(2).

*See Section 2.12 for a discussion of the Family Division's jurisdiction of contempt proceedings.

NOTE: The court may punish by the contempt power even after it has terminated jurisdiction over the juvenile. See Form JC 36 (Request and Order Terminating Court Jurisdiction), where the right to enforce payments of any delinquent account or unpaid reimbursement order is reserved.*

E. Copy of Reimbursement Order to Department of Treasury

If the court issues an order in respect to payments by a parent under MCL 712A.18(2); MSA 27.3178(598.18)(2), a copy shall be mailed to the Department of Treasury. Action taken against parents or adults shall not be released for publicity unless the parents or adults are adjudged guilty of contempt of court. The court shall furnish the Family Independence Agency with the reports of the administration of the court in a form recommended by the Michigan Association of Probate and Juvenile Court Judges. Copies of these reports shall, upon request, be made available to other state departments by the Family Independence Agency. MCL 712A.28(3); MSA 27.3178(598.28)(3).

12.15 Orders for Reimbursement of Costs When Juvenile Is Placed on Probation in Juvenile's Own Home

An order of disposition placing a juvenile on probation in the juvenile's own home may contain a provision for the reimbursement by the juvenile, parent, guardian, or custodian to the court for the cost of service. If an order is entered under this subsection, an amount due shall be determined and treated in the same manner provided for an order under MCL 712A.18(2); MSA 27.3178(598.18)(2), dealing with reimbursement for cost of care outside the juvenile's own home. MCL 712A.18(3); MSA 27.3178(598.18)(3).*

The guidelines and model schedule developed by the State Court Administrator's Office pursuant to MCL 712A.18(2); MSA 27.3178(598.18)(2), may be used for determining the amount of reimbursement when a juvenile is placed on probation within or outside of the home. MCL 712A.18(6); MSA 27.3178(598.18)(6).

*See Section 12.14, above. Note that reimbursement for costs when the juvenile is placed in the home is discretionary, not mandatory, as when the juvenile is placed outside the home.

12.16 Orders for Reimbursement of Attorney Fees

If the court appoints an attorney to represent a juvenile, parent, guardian, or custodian, the court may enter an order requiring the juvenile, parent, guardian, or custodian to reimburse the court for attorney fees. MCL 712A.18(5); MSA 27.3178(598.18)(5), MCL 712A.17c(8); MSA 27.3178(598.17c)(8), and MCR 5.915(D). An order assessing attorney costs may be enforced through contempt proceedings.* MCL 712A.17c(8); MSA 27.3178(598.17c)(8), and MCR 5.915(D). See also MCR 5.916(D) (reimbursement for costs of guardian ad litem may also be ordered).

*See Forms JC 38, 39, and 40.

12.17 Use of Bail Money to Pay Reimbursement Orders

If a disposition imposes reimbursement or costs, the bail money posted by the parent of a juvenile must first be applied to the amount of reimbursement and costs, and the balance, if any, returned. MCR 5.935(C)(6)(a).*

*See Form JC 31.

12.18 Use of Wage Assignments to Pay Reimbursement Orders

MCL 712A.18b; MSA 27.3178(598.18b), states that whenever the court enters a reimbursement order and the parent or other adult legally responsible for the care of the child fails or refuses to obey and perform the order, and has been found guilty of contempt of court for such failure or refusal, the court making the order may order* an assignment to the county or state of the salary, wages, or other income of the person responsible for the care of the child, which assignment shall continue until the support is paid in full. The order of assignment shall be effective one week after service upon the employer of a true copy of the order by personal service or by registered or certified mail.

*See Form JC 39.

*See Form JC 58.

Thereafter the employer shall withhold from the earnings due to the employee the amount specified in the order of assignment for transmittal to the county or state until notified by the court that the support arrearage is paid in full.* An employer shall not use the assignment as a basis, in whole or in part, for the discharge of the employee or for any other disciplinary action against an employee. Compliance by an employer with an order of assignment operates as a discharge of the employer's liability to the employee as to that portion of the employee's earnings so affected. MCL 712A.18b; MSA 27.3178(598.18b).

12.19 Crime Victim's Rights Fund Assessment

MCL 712A.18(12); MSA 27.3178(598.18)(12), provides that if the court enters an order of disposition based on an act that is a "juvenile offense" as defined in MCL 780.901; MSA 28.1287(901), the court shall order the juvenile to pay an assessment as provided in that act.

MCL 780.901(f); MSA 28.1287(901)(f), in turn, defines juvenile offense as an offense committed by a juvenile that if committed by an adult would be a felony, serious misdemeanor, or a specified misdemeanor. For a definition of felony, see MCL 780.901(d); MSA 28.1287(901)(d); for a definition of serious misdemeanor, see MCL 780.901(g); MSA 28.1287(901)(g), and MCL 780.811(a)(i)–(xv); MSA 28.1287(811)(a)(i)–(xv); for a definition of specified misdemeanor, see MCL 780.901(h)(i)–(x); MSA 28.1287(901)(h)(i)–(x).

The court shall order each juvenile for whom the court enters an order of disposition for a juvenile offense to pay an assessment of \$20.00. The court shall order a juvenile to pay only one assessment per case. MCL 780.905(2); MSA 28.1287(905)(2).

12.20 Allocation of Money Collected From Payment of Fines, Costs, Restitution, Assessments, or Other Payments

If a child is subject to any combination of fines, costs, restitution, assessments, or payments arising out of the same order of disposition, money collected from that child, or his or her parent or parents, for the payment of fines, costs, restitution, assessments, or other payments shall be allocated as provided in MCL 712A.29; MSA 27.3178(598.29).

A. Payments to Victim

MCL 712A.29(2); MSA 27.3178(598.29)(2), states that, except as otherwise provided below, if a child is subject to payment of victim payments and any combination of other fines, costs, assessments, or other payments, 50 percent of the money collected from that child, or his or her parent or parents, shall be applied to payment of the victim payments, and the balance shall be applied to payment of fines, costs, and assessments or other payments. If fines, costs, or other assessments or payments remain unpaid after all victim payments have been paid,

additional money collected shall be applied to payment of those fines, costs, or other assessments or payments. If victim payments remain unpaid after all fines, costs, or other assessments or payments have been paid, additional money collected shall be applied toward payment of those victim payments.

MCL 712A.29(7); MSA 27.3178(598.29)(7), defines victim payments as restitution paid to the victim or the victim's estate, but not to a person who reimbursed the victim or the victim's estate for the loss. Payment of the Crime Victims Rights Assessment is also excluded from the definition of victim payments.*

*See Sections 12.12(A) and (G) (restitution) and 12.19 (CVRF assessment), above.

B. Allocation of Costs, Fines, and Assessments

In cases involving orders of disposition for offenses that would be violations of state law if committed by an adult, money allocated under MCL 712A.29(2); MSA 27.3178(598.29)(2), for payment of costs, fines, and assessments or payments other than victim payments shall be applied in the following descending order of priority:

- (a) payment of costs, then
- (b) payment of fines, then
- (c) payment of assessments and other payments.

MCL 712A.29(3)(a)–(c); MSA 27.3178(598.29)(3)(a)–(c).

MCL 712A.29(5); MSA 27.3178(598.29)(5), states that money allocated for payment of costs under Subsection (3) shall be paid to the county treasurer for deposit in the general fund of the county. Money allocated for payment of fines under Subsection (3) shall be paid to the county treasurer to be used for library purposes as provided by law.

In cases involving orders of disposition for offenses that would be violations of local ordinances if committed by an adult, money allocated under MCL 712A.29(2); MSA 27.3178(598.29)(2), for payment of costs, fines, and assessments or payments other than victim payments shall be applied in the following descending order of priority:

- (a) payment of fines and costs, then
- (b) payment of assessments and other payments.

MCL 712A.29(4)(a)–(b); MSA 27.3178(598.29)(4)(a)–(b).

MCL 712A.29(6); MSA 27.3178(598.29)(6), states that one-third of the money allocated for payment of fines and costs under Subsection (4) shall be paid to the treasurer of the political subdivision whose ordinance was violated, and two-thirds of that money shall be paid to the county treasurer for deposit in the general fund of the county.

Part IV — Post-Disposition Orders and Notices

12.21 Notices of Dispositions to Other Courts That Have Jurisdiction Over the Juvenile

*See Form MC 28.

Where the child is subject to a prior or continuing order of any other court of this state, notice must be filed in such other court of any order subsequently entered under the Juvenile Code. MCL 712A.3a; MSA 27.3178(598.3a).^{*} Notice must also be served, personally or by registered-mail service, on the parents, guardians, or person in loco parentis and to the prosecuting attorney of the county where the other court is located. Such notice shall not disclose any allegations or findings of fact set forth in petitions or orders, or the actual person or institution to whom custody is changed. *Id.*

*See Section 2.16 for a detailed discussion of the requirements of MCR 3.205.

MCR 5.927 provides that the manner of notice to the other court and the authority of the Family Division to proceed are governed by MCR 3.205.^{*}

12.22 Notices of Dispositions to the Department of State Police

*See Form JC 25.

Upon disposition or dismissal of a juvenile offense, the clerk of the court entering the disposition or dismissal shall immediately advise the Department of State Police of the disposition or dismissal on forms approved by the State Court Administrator.^{*} The report to the Department of State Police shall include information as to the finding of the judge or jury and a summary of the disposition imposed. MCL 712A.18(11); MSA 27.3178(598.18)(11).

12.23 Notices of Dispositions to the Secretary of State

*See Section 2.10 for a discussion of Family Division jurisdiction over criminal motor vehicle violations.

MCL 712A.2b(d); MSA 27.3178(598.2b)(d), and MCL 257.732(2); MSA 9.2432(2), require the court, within 14 days of the order of disposition, to forward an abstract of the court record to the Secretary of State where the juvenile is found within the jurisdiction of the Family Division for a criminal violation of the Motor Vehicle Code.^{*}

*See Section 7.4 for a definition of “felony in which a motor vehicle was used.”

MCL 257.732(8); MSA 9.2432(8), requires the clerk of the Family Division to forward an abstract of the court record to the Secretary of State where the offense for which the disposition is ordered is a “felony in which a motor vehicle was used.”^{*}

The abstract must be certified by signature, stamp, or facsimile signature to be true and correct, and it must contain the following information:

- (a) name, address, and date of birth of the person charged or cited;
- (b) license number, if any;

- (c) date and nature of the violation;
- (d) type of vehicle driven at the time of the violation;
- (e) date of conviction, finding, judgment, or determination;
- (f) whether bail was forfeited;
- (g) any license revocation, restriction, suspension, or denial ordered by the court; and
- (h) other information considered necessary to the Secretary of State.

MCL 257.732(3)(a)–(h); MSA 9.2432(3)(a)–(h).

If the juvenile offense for which the disposition is ordered requires the court to deny issuance of, or revoke, suspend, or restrict the license of the juvenile, the court must report the finding made by the jury or the court to the Secretary of State pursuant to MCL 257.625; MSA 9.2325. MCL 769.1e(2)(b) and (3); MSA 28.1073(4)(2)(b) and (3).

NOTE: For more detailed information on juvenile traffic violations, see *Traffic Benchbook*, Vol. 2, Chapter 3 (MJJI, 1993).

12.24 Special Requirements in Status Offense and Wayward Minor Cases Involving Native American Juveniles

MCR 5.980(C)(1) states that except in cases of emergency removal,* an Indian child shall not be removed from the home unless there is clear and convincing evidence, including testimony by qualified expert witnesses, that services designed to prevent the break-up of the Indian family have been furnished to the family and that continual custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. See 25 USC 1912 (d) and (e), *In re Kreft*, 148 Mich App 682, 686–93 (1986), and *In re Jacobs*, 433 Mich 24, 39–42 (1989).

The Indian child, if removed from his or her home, shall be placed, in descending order of preference, with:

- (a) a member of the child's extended family (see 25 USC 1903(2));
- (b) a foster home licensed, approved, or specified by the child's tribe;
- (c) an Indian foster family licensed or approved by a non-Indian licensing authority; or

*See Section 7.18 for a discussion of transfer, notice, and emergency removal requirements.

(d) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the child's needs.

MCR 5.980(C)(2)(a)–(d).

In addition, the court may order another placement for good cause shown. MCR 5.980(C)(2). See also 25 USC 1915(b).

*See Section 4.10(A) for a list of “reportable juvenile offenses.”

12.25 Required Fingerprinting of Juveniles for Reportable Juvenile Offenses*

MCR 5.936(B), MCR 5.943(E)(3), MCL 712A.11(5); MSA 27.3178(598.11)(5), and MCL 712A.18(10); MSA 27.3178(598.18)(10), place responsibility on the judge or referee who conducts the preliminary hearing or disposition hearing to make sure that fingerprints are taken. They state that at the time the court authorizes the filing of a petition alleging a reportable juvenile offense, and before the court enters an order of disposition on a reportable juvenile offense, the court shall examine the confidential files to verify that the juvenile has been fingerprinted. If the juvenile has not been fingerprinted, the judge or referee must:

- F direct the juvenile to go to the law enforcement agency involved in the apprehension of the juvenile, or to the sheriff's department, so fingerprints may be taken, or
- F issue an order to the sheriff's department to apprehend the juvenile and take the juvenile's fingerprints.*

*See Form MC 233.

12.26 Sex Offenders Registration

*See Section 4.11.

MCL 712A.18(13); MSA 27.3178(598.18)(13), states that if the court has entered an order of disposition for a “listed offense,” as defined in MCL 28.722; MSA 4.475(2), or an attempt or conspiracy to commit any “listed offense,” the court or the Family Independence Agency shall register the juvenile or accept the juvenile's registration as provided in the Sex Offenders Registration Act, MCL 28.721 et seq.; MSA 4.475(1) et seq.*

NOTE: The court must enter an order of disposition before the juvenile is subject to the requirements of the Sex Offenders Registration Act. Thus, *in an appropriate case*, if the court takes a juvenile's plea of admission to a listed offense under advisement while the juvenile undergoes counseling and treatment, or if the court delays disposition, the juvenile would not be required to register as a sex offender. Such procedures should not, however, be used for the sole purpose of avoiding the requirements of the Sex Offenders Registration Act.